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IN THE

Supreme Court of the United States

No. 172

ERIC G. KAUFMAN and AENNI C. KAUFMAN, *Petitioners*,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., etc.,

J. HOWARD MCGRATH, Attorney General of the United States, as successor to the Alien Property Custodian,

GEORGIA NEESE CLARK, Treasurer of the United States, and

REMINGTON RAND, INC., *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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July 3, 1951.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Eric G. Kaufman and Aenni C. Kaufman, your petitioners, as non-enemy stockholders of Societe Internationale pour Participations Industrielles et Commerciales S. A., a Swiss corporation,[1] on their own behalf and on behalf of all other non-enemy stockholders of the corpora-

[1] Hereinafter variously referred to as "I. G. Chemie," "the corporation", or "plaintiff."

tion similarly situated,[2] pray that a writ of certiorari be issued to revew the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled action on April 5, 1951, denying petitioners' amended motion under Rules 24(a)(2) and 24(a)(3) F.R.C.P. for leave to intervene and to file an amended complaint in intervention.

OPINIONS BELOW.

The oral opinion of the District Court (R. 74) is unreported. The opinion of the Court of Appeals (R. 79) is not yet reported.

JURISDICTION.

The judgment of the Court of Appeals with respect to which the writ of certiorari is sought was entered on April 5, 1951 (R. 81). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED.

This petition presents for decision for the first time in this Court, and in a case of fundamental importance, the issues anticipated and posed by this Court in *Clark* v. *Uebersee Finanz-Korporation*, 332 U.S. 480, 489 (1947), as awaiting "legislative or judicial clarification."

A Swiss corporation, whose American assets have been vested by the Alien Property Custodian, has some enemy shareholders. The Government further claims that the corporation is enemy controlled or tainted by reason of its management shareholders. The issue basic to this petition is: "what part of such friendly alien corporation's property may be retained"[3] by the Government, where the

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[2] Non-enemy shareholders of the corporation owning over 11,000 ordinary or common shares out of a total of approximately 140,000 outstanding have formally supported petitioners in this proceeding (R. 69).

[3] The issue as posed in the *Uebersee* case is quoted in full at page 6, *infra*.

shareholdings of non-enemies amount to more than one-third of the outstanding voting stock of the corporation and represent more than 50 percent of the invested capital of the corporation?

This basic issue is presented in three separate but related questions in this case, as follows:

Do American and other non-enemy stockholders of a Swiss corporation have a right to intervene as a class in an action brought by that corporation under Section 9(a) of the Trading With the Enemy Act to recover property vested by the Alien Property Custodian—

(1) where the management of the corporation, because of financial self-interest, violates its fiduciary obligation to the corporation and its stockholders by deliberately refusing to assert a claim, even in the alternative, for the return of the proportionate non-enemy interest in the vested property, although such claim has been specifically reserved by this Court in the *Uebersee* case for future decision, and the corporate management by its refusal may cause substantial loss to such American and other non-enemy stockholders?

(2) where the management of the corporation and the Alien Property Custodian have affirmatively stated their intention to settle the corporate suit, and have not denied petitioners' allegations that such settlement (a) will be made for an amount far less than the vested assets proportionate to the non-enemy interests in the corporation and thus inadequate, and (b) will accrue to all stockholders alike, thus ultimately benefitting enemy stockholders at the expense of non-enemy stockholders, contrary to the purpose and provisions of the Trading With the Enemy Act?

(3) where the vested property is presently a fund subject to the control of the court, and disposition of the property will adversely affect the American and

other non-enemy stockholders unless their interests are adequately represented in the proceeding?

STATUTES INVOLVED.

The pertinent statutory provisions are printed in Appendix A, *infra*, at pages 19 to 26.

STATEMENT.

The plaintiff, I. G. Chemie, is a Swiss holding corporation, the American assets of which consist principally of almost all of the outstanding stock of General Aniline & Film Corporation, its American subsidiary. Between 1942 and 1946, the Alien Property Custodian vested these assets, valued at from $50,000,000 to $100,000,000 (R. 48-49).

I. G. Chemie on October 21, 1948, brought the principal proceeding under Section 9(a) of the Trading With the Enemy Act in the United States District Court for the District of Columbia, for return of the vested property. Its complaint is very similar to that sustained by this Court in the *Uebersee* case in 1947, and alleges substantially that it was and is non-enemy (R. 1-15).[4] The Government answered in effect that I. G. Chemie was enemy and enemy tainted because those stockholders in control of the management—known as the "Sturzenegger Group" —were part of a conspiracy to "cloak" the ownership and domination by I. G. Farben of properties in many countries of the world, including the United States, and therefore the corporation was not entitled to the return of any of the vested property (R. 28-30).

In this action it appears on the record that the "Sturzenegger Group" owned or controlled, in all, about 39 percent of the voting stock of the corporation (R. 51). It is

[4] The term "non-enemy" is used herein for the sake of brevity to mean not an enemy, enemy national, an ally of an enemy, a national of an ally of enemies, a national of a designated enemy country, or a national of Germany or Japan, within the meaning of the Trading With the Enemy Act, as amended.

further claimed of record in this action that approximately an additional 11 percent of the corporation's voting stock was owned at the time of vesting by nationals of Germany (R. 51), and that more than 33 percent of the voting stock was owned by American, Swiss, and other non-enemy stockholders (R. 50).

Although the Government alleges that the corporation was enemy tainted and therefore not entitled to a return of any of its vested property, the corporation has refused to make a claim in any form for that part of the vested property to which it or its non-enemy stockholders may be entitled under the decision in the *Uebersee* case. The management prefers to risk all or nothing on its ability to prove complete freedom from "enemy taint"; it has refused and still refuses to present the "*Uebersee* issue."[5] Obviously, such a claim would require the segregation of non-enemy from enemy interests. As the Government alleges enemy interest or enemy taint by and through the management stockholders, termed the "Sturzenegger Group," a serious conflict is raised between the self-interest of the management group and the interests of the corporation, thus preventing assertion of the "*Uebersee* issue," in violation of management's fiduciary duty to the corporation and its stockholders (R. 51-53).

After the principal action had been pending for one year, but before the action was formally at issue, both I. G. Chemie and the Government stated for the record that they were about to effect a settlement, which would dispose of title to the vested property, and for an amount which—as petitioners have alleged and respondents nowhere contradict—is substantially less than the value of the proportionate interest of the non-enemy stockholders in the vested property (R. 57-58).

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[5] The theory of the corporation, in its complaint, excludes the possibility of recovery upon the *Uebersee* issue. The *Uebersee* issue requires an entirely different order of proof, which the corporation refuses to make in this case. See the *Uebersee* case on remand to the District Court, 82 F. Supp. 602, 606 (1949).

Position of Your Petitioners. Thereafter, in March 1950, petitioners,[6] who are citizens of the United States, as non-enemy shareholders of I. G. Chemie, on behalf of themselves and all others similarly situated, moved to intervene in the corporation's suit in the U. S. District Court for the District of Columbia in order to present for adjudication an alternative issue—that only part of the property of I. G. Chemie should be retained by the Custodian if I. G. Chemie should be found to be enemy or enemy tainted—and otherwise to protect their interests in the property under the control of the Court (R. 44). The amended motion for leave to intervene and the proposed amended complaint in intervention were supported on the record by shareholders owning over 11,000 ordinary or common shares of I. G. Chemie out of a total of approximately 140,000 shares outstanding, and having a current market value of about $1,800,000 (R. 69).

Petitioners concurrently therewith, on their own behalf, brought suit under Section 9(a) of the Trading With the Enemy Act in the United States District Court for the Southern District of New York (R. 85).

In *Uebersee* this Court specifically left open for subsequent judicial or legislative clarification the question whether there must be a fractional return of vested corporate property proportionate to the non-enemy ownership in a foreign non-enemy corporation. There this Court stated (p. 489):

> "It is suggested, however, that this approach may produce results which are both absurd and uncertain. It is said that the entire property of a corporation would be jeopardized merely because a negligible stock interest, perhaps a single share, was directly or indirectly owned or controlled by an enemy or ally of an enemy. It is also pointed out that securities or interests other than stock might be held by an enemy or ally

[6] They are now and have been at all times since December 6, 1941, non-enemy residents of New York (R. 48) and the sole and beneficial owners of 86 shares of the capital stock of I. G. Chemie having a current market value of about $15,000 (R. 50).

of an enemy and used effectively in economic warfare against this country. But what these interests are, the extent of holdings necessary to constitute an enemy taint, what part of a friendly alien corporation's property may be retained where only a fractional enemy ownership appears, are left undecided. Since we assume from the allegations of the complaint that respondent is free of enemy taint and therefore is not within the definition of enemy or ally of an enemy, those problems are not now before us. We recognize their importance; but they must await legislative or judicial clarification."

In a case decided by the United States Court of Appeals for the Second Circuit, *Standard Oil Co.* v. *Clark*, 163 F. 2nd 917, while the *Uebersee* case was awaiting decision in this Court, a fractional return of vested corporate property was in fact made where the ultimate enemy and non-enemy ownership was mixed. Subsequent to its decision in *Uebersee*, this Court denied certiorari in *Standard Oil*, 333 U.S. 873. From these decisions it would appear that the right to a fractional return of the proportionate non-enemy interest in I. G. Chemie's vested property exists even if the corporation is found to be enemy. However, the question still remains unanswered whether that right in the vested property should be claimed on behalf of the corporation or by the non-enemy shareholders as a class in the corporate action or by the individual shareholders proceeding independently of each other in separate actions.

The motion for leave to intervene, together with the supporting papers, presupposes that the claim should be made by the corporation, or if it refuses, on its behalf; and in any case, since the vested property is before the court in the corporate action the shareholders must intervene in that action in order to protect their interest in the property, for the outcome of that action, whether by judgment or settlement, might be binding upon the stockholders and will adversely affect any interest which they may have in the property. However, the law is unsettled and it was therefore necessary for your petitioners also to sue in New

York under Section 9(a) of the Act in order to toll the possible running of the Statute of Limitations (Sec. 33, Trading With the Enemy Act, Appendix Page 26, *infra*), if it should by any chance develop that the claim is that of the stockholders, each of them proceeding by separate actions, albeit with respect to the same property.

The adverse determination of the Court of Appeals for the District of Columbia Circuit on the amended motion to intervene and proposed amended complaint in intervention is the subject of this petition. The proposed complaint in effect alleges that an alternative claim exists for the return of the vested property proportionate to the non-enemy ownership of I. G. Chemie; that the management of the corporation refuses to make such a claim, for, being themselves charged with enemy taint, their personal and financial self-interest is in conflict with their fiduciary duty to make such a claim in behalf of the corporation; and that accordingly your petitioners are entitled to intervene for that purpose because your petitioners and all other non-enemy stockholders similarly situated are or may be bound by the judgment in the action (R. 47-57).

The complaint also alleges that the non-enemy stockholders as a class have an interest in certain property under the court's control; that the stockholders as a class would be adversely affected by a disposition of the property and are without adequate protection unless they are allowed to intervene (R. 66-67).

The complaint further alleges that I. G. Chemie and the Government announced their intention to effect an early settlement of the principal action for an amount far below the value of the proportionate non-enemy interests in the vested property; that the proposed settlement does not take into account the claim indicated in the *Uebersee* case; that the settlement would be made with the corporation and thus would be for the ultimate benefit both of persons eligible and of persons ineligible for the return of property vested under the Trading With the Enemy Act; that the benefits accruing to ineligible persons would be at the ex-

pense of the eligible non-enemy stockholders of I. G. Chemie; that such a settlement was contrary to the provisions of the Trading With the Enemy Act; that the I. G. Chemie management desired the settlement for its own purposes rather than for the welfare of the stockholders, particularly non-enemy stockholders; and that your petitioners and other stockholders similarly situated were entitled as a matter of right to intervene to protect their interests (R. 57-66). The prayer of the complaint requested, in effect, the return of a portion of the vested property commensurate with the non-enemy ownership of I. G. Chemie and, in any case, that the proceeds of any partial judgment or settlement be turned over to the corporation under such orders of the court as would effectively prevent the ultimate benefits thereof from reaching persons ineligible under the Trading With the Enemy Act until after all other interests in the corporation should be made whole (R. 67).

Position of I. G. Chemie and the Government. Neither I. G. Chemie nor the Government, in any of its affidavits, briefs, or oral argument, has ever challenged the substantive allegations of your petitioners' proposed complaint in intervention. Counsel for the management of the corporation has merely taken the position that the claim therein asserted is without merit and that in any case your petitioners have no standing to intervene to compel the assertion of the claim which the corporation refuses to assert, to protect their interest in the vested property, or to contest the contemplated settlement regardless of its terms. Both the Government and the corporation have taken the position that, if by some remote contingency there exists a right to a partial return of the vested property, that right can be exercised only by separate individual suits by each shareholder against the Government, notwithstanding the likelihood that such right may be foreclosed by settlement,

or by any judgment in this action, whether for or against the corporation.[7]

Your petitioners base their procedural right to intervene in the District of Columbia action upon the provisions of Rule 24(a), Federal Rules of Civil Procedure, and the opinion of this Court in *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U. S. 502 (1941).

The Decisions of the Courts Below. The District Court denied your petitioners' amended motion for leave to intervene without indicating any specific grounds for the denial. In an opinion delivered from the bench, the court stated that it believed the petitioners had not established a clear right to intervene and that it reached its decision notwithstanding the fact that the court's views were counter to the trend of judicial opinion to permit persons who can show some color of right to proceed by intervention. The *Uebersee, Standard Oil,* and *Missouri-Kansas Pipe Line* cases were argued and briefed at length to the court but were neither discussed nor referred to in its decision.

The Court of Appeals affirmed the decision of the District Court in a short opinion. It held that your petitioners had no right to intervene under the provisions of Rule 24(a)(2), authorizing intervention as of right "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action," on the ground that your petitioners will not be bound by a judgment in the action because they cannot be deprived of any right to a share of the vested corporate property in a suit to which they are not

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[7] It may be of interest to note that the Government moved to dismiss the complaint in the New York action on the ground that only the corporate entity whose property was vested is a proper claimant under the Trading With the Enemy Act. Therefore, it argued, petitioners' rights, if any, should be adjudicated in the District of Columbia action. The Government's motion to dismiss was denied.

parties. The court neither cited authority for nor discussed this unusual assumption. It also held that your petitioners had no right to intervene under the provisions of Rule 24(a)(3), which provides for intervention when the applicant is so situated as to be adversely affected by a "distribution or other disposition of property which is in the custody or subject to the control or disposition of the court," because it said this provision contemplates that the intervenor should have a legal interest in the property in the custody of the court, and a stockholder has no such interest in vested corporate property.

There was no mention whatever of the issue as to whether the corporation or its non-enemy stockholders had a legal or equitable interest either within the meaning of that term as used in Section 9(a) of the Trading With the Enemy Act, or otherwise, in that part of the property proportionate to the non-enemy shareholdings which would be adversely affected by disposition of the property. Although the *Uebersee, Standard Oil,* and *Missouri-Kansas Pipe Line* cases were fully briefed and argued to the Court of Appeals, they are not even cited, much less discussed or distinguished, in the opinion of the court. Moreover, the Circuit Court completely ignored the trend of decision to the effect that the corporate entity will not be allowed to prevent judicial protection of stockholders' interests in a proper case, such as when there are conflicts of interest. This Court, in the *Uebersee* case, in overruling *Behn, Meyer & Co.* v. *Miller,* 266 U. S. 457 (1925), in effect enabled the Custodian to look behind the otherwise non-enemy corporate facade to reach enemy interests. At the same time, this Court preserved for future decision the protection to be afforded non-enemy interests when the Custodian does so. The Custodian cannot have it both ways. If he may properly disregard the Swiss incorporation in order to reach enemy interests hidden thereby, he cannot at the same time deny employment of the same process to uncover and protect the non-enemy interests. To do otherwise would be violative

of the constitutional right of non-enemy stockholders to just compensation under the Fifth Amendment.

The holding of the Circuit Court that your petitioners will not be bound by the judgment in the action and the holding on the other hand that your petitioners have no legal interest in the vested corporate assets are not only inconsistent with the holdings of this Court, but are inconsistent with each other.* Implicit in the court's holding that your petitioners will not be bound by a judgment in the corporate action is the conclusion that the corporation has no right to a fractional return of the vested property. But cf. *Standard Oil Co.* v. *Clark, supra,* and the *Uebersee* case. Implicit in the court's holding that the stockholders have no direct legal interest in the vested corporate property is the conclusion that a non-enemy stockholder has no right to a fractional return of vested corporate property. Thus the Circuit Court has without warrant completely ignored the *Uebersee* case in word and in action and has in effect held that, as a matter of law, there cannot be a partial return of vested property where only a fractional enemy interest appears. Yet at the very end of its opinion, the court nonetheless stated that it expressed no opinion with regard to the New York action.

REASONS FOR GRANTING THE WRIT.

I. The questions expressly reserved for future decision in the *Uebersee* case are vital both to the proper administration of the Trading With the Enemy Act and to this petition. These questions are now raised for the first time in this Court and in a case presenting fundamental and far-

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*It is interesting to note that the Court of Appeals relies in part for its holding under Rule 24(a)(3) upon *United States* v. *Columbia Gas & Electric Corp.*, 27 F. Supp. 116, without referring to the fact that the Supreme Court ultimately held in the *Missouri-Kansas* case that the applicant for intervention in the *Columbia Gas* case in fact had a right to intervene in the action.

reaching consequences. They are quoted *in extenso* at page 6 of this petition.

The petition also presents the vital issue as to the proper method of raising this question where the management of the corporation refuses to assert the claim because the assertion or adjudication of such a claim is contrary to its own financial interest.

If the corporation only through its management is deemed to be a proper claimant, denial of intervention in the instant case effectively precludes assertion of the claim. If the non-enemy stockholders have any interest in the property they can be protected only by intervention. If the stockholders as individuals are the proper claimants, granting of intervention is essential, for otherwise serious complications would be presented: (a) Adjudication or settlement of the corporate claim, and the consequent removal of the assets or their proceeds beyond the jurisdiction of American courts, will make academic any real relief through numerous separate suits by stockholders. (b) If the stockholders have preserved their possible individual rights by filing administrative claims with the Alien Property Custodian, such a multiplicity of actions with respect to the same vested property will result from separate suits to enforce such rights as seriously to interfere with the administration of the Trading With the Enemy Act. (c) Alternatively, if the stockholders are believed to have failed to protect their possible individual rights, having relied upon the claims filed by their corporate management, their individual rights might possibly be barred by the Statute of Limitations.*

* It must be noted that prior to the decision in *Uebersee*, a corporation organized under the laws of a non-enemy country was entitled under Section 9(a) of the Act to the return of all of the vested assets. *Behn, Meyer & Co.* v. *Miller*, 266 U. S. 457 (1925). It is now unclear whether the Statute of Limitations is tolled for all purposes by virtue of the initiation of a Section 9(a) suit by the corporation.

In sum, intervention is essential under any set of circumstances to protect the position of the non-enemy stockholders from being adversely affected by the disposition of the corporate suit, whether by judgment or settlement.

2. The holding of the court below that your petitioners as stockholders will not be bound[10] by the judgment in the corporate action must be premised either upon the theory that (1) the right to a fractional return does not exist, or that (2) the corporate entity is not the proper claimant of the right. If the holding is based upon the theory that the right does not exist, the decision of the Circuit Court conflicts in principle with *Standard Oil Co.* v. *Clark*, 163 F. 2nd 917 (C.C.A. 2d), cert. denied, 333 U.S. 873, where, in fact, complicated intermixtures of enemy and non-enemy ownership in vested assets were unraveled as a basis for decreeing the return of vested assets commensurate with the non-enemy ownership. If the court's holding is based upon the theory that the corporation is not the proper claimant of the right, the conclusion conflicts with the second holding of the court below, namely, that your petitioners do not have an interest in the assets under the control of the court. The holding of the court thus becomes, in effect, a determination on the merits that the "*Uebersee* issue" cannot in fact exist.

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[10] The fact that stockholders will be bound by a judgment in an action to which the corporation is a party has traditionally been a basis of stockholder intervention under Rule 24(a)(2), F. R. C. P., e.g., *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U. S. 502 (1941); *Pyle-National Co.* v. *Amos*, 172 F. 2nd 425 (C. A. 7, 1949); *Park & Tilford, Inc.* v. *Schulte*, 160 F. 2nd 984 (C. C. A. 2, 1947); cf. Note, *Shareholder Intervention in Corporate Litigation*, 63 Harvard L. Rev. 1426, 1429 (1950). Accordingly, the holding of the court below must have been based on the theory that the corporation does not have the right to assert a claim for the return of the non-enemy fractional interest in the vested assets. If the corporation does not have that right, it must accrue to the stockholders as individuals, in which event the court below is clearly wrong in holding that your petitioners, as stockholders, do not have the necessary "interest" under Rule 24(a)(3) F. R. C. P.

3. The instant petition involves an important question as to the practice of intervention under Rule 24(a) of the Federal Rules of Civil Procedure and the decision of this Court in *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U.S. 502 (1941).

In this case, the law is unsettled, the issues are of great public importance and the interests of your petitioners and of other stockholders of I. G. Chemie similarly situated cannot be adequately protected except by the intervention requested. In the markedly similar situation that existed in the *Missouri-Kansas* case, this Court granted intervention. It is submitted that the doctrine of that case and the rationale of Rule 24(a) F.R.C.P. are designed to protect your petitioners in the face of the circumstances confronting them. Rule 24(a)(2) speaks in terms of an applicant for intervention whose interests are or *may be* inadequately represented by existing parties, and who is or *may be* bound by the judgment in the action. Rule 24(a)(3) speaks in terms of an applicant so situated as to be adversely affected by the disposition of property under the control of the court. All the questions raised in this petition, your petitioners pressed vigorously on the courts below. The implications of the *Uebersee*, *Standard Oil* and *Missouri-Kansas* cases were fully argued. Yet without any reference to these questions or discussion of these cases, it was held that your petitioners could neither be bound by the disposition of the action nor have any interest that could be adversely affected by the disposition of the vested assets under the control of the court.

With respect to the provisions of Rule 24(a)(2), it seems clear that the management of I. G. Chemie, which holds a substantial stock interest and which is itself charged with "enemy taint" in the principal action, has a personal and financial self-interest in precluding any adjudication of a claim made under the *Uebersee* case. Adjudication of that claim not only would subject the management to a possible judicial determination that it was an enemy "cloak," but under established corporation law would also preclude it,

as enemy, from participating in the benefits of any assets returned under the Trading With Enemy Act.[11] Clearly, then, such a management will not and cannot properly discharge its fiduciary obligations to the corporation and to its non-enemy stockholders vis-a-vis the Trading With the Enemy Act. Equally clearly, such a management does not adequately represent the non-enemy stockholders, nor their interests, within the language of Rule 24(a)(2).

That the non-enemy stockholders may be bound by the judgment in the action has already been discussed herein.[12] That the non-enemy stockholders in any case will be adversely affected by a disposition of the assets in the control of the District of Columbia court, within the meaning of Rule 24(a)(3), has likewise been previously discussed.[13]

Thus, your petitioners have a right to intervene under 24(a)(2) if the claim is that of the corporation. If the claim is that of the stockholders, the stockholders plainly have an "interest" in the vested assets and will be "adversely affected" within Rule 24(a)(3) and can intervene thereunder.

4. The present petition involves vital and fundamental questions in the administration of the Trading With the Enemy Act. This case alone affects the interests of American, British, Dutch, French and Swiss stockholders, among others, who are nationals of allied or neutral countries or persecutees of our enemies in the last war—non-enemy stockholders, numbering in the thousands, of a corporation organized under the laws of a non-enemy country. This

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[11] E.g., *Backus* v. *Finkelstein*, 23 F. 2nd 357 (D. Minn. 1927), app. dismissed, 31 F. 2nd 1011 (C. C. A. 8, 1929); *Matthews* v. *Headley Chocolate Co.*, 130 Md. 523, 100 Atl. 645 (1917); *Brown* v. *DeYoung*, 167 Ill. 549, 47 N. E. 863 (1897). A court of equity will not permit wrongdoing stockholders to participate in the corporation's recovery in connection with such wrong, at the expense of innocent stockholders.

[12] See page 13, *supra*.

[13] See page 13, *supra*.

case itself involves the disposition of vested assets valued between $50,000,000 and $100,000,000. The Department of Justice has stated that the issues upon which this petition is based may involve as much as $185,000,000 in vested property, and could only vaguely estimate that the number of non-enemy stockholders of foreign corporations whose property was seized runs into the thousands.[14] Moreover, it is the policy of our Government to encourage private American and Allied investments abroad to assist in the rehabilitation of a war-torn world, and uncertainties as to the protection to be afforded and the constitutional rights of minority American and allied interests in foreign corporations which can possibly come under enemy domination in time of war, will inevitably curtail the amount of such investments.

5. In sum, this Court in the *Uebersee* case expressly left open the question, extremely vital to the administration of the Trading With the Enemy Act, under what circumstances the right to a fractional return of vested corporate property exists, in whom such right exists, and for whose benefit it exists and how it may be enforced.

The present action is not only the first but will be the most important case to be presented to this Court directly involving that question. Nevertheless, the decision of the court below, completely ignoring the pertinent cases, applies a most narrowly-construed procedural device based on patently self-contradictory interpretations of the nature of such right, effectively to foreclose the raising of this question in this action or in any other case of like circumstances.

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[14] See statement of Harold F. Reis, Acting Chief, Legal Branch, Office of Alien Property, Department of Justice, in House Hearings on H. R. 6808, etc., 81st Cong., 2nd Sess., pages 402, *et seq.*

CONCLUSION.

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

Trading With the Enemy Act, as Amended.

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign or otherwise dispose of or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

SEC. 5. (b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or

any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like

fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

SEC. 6. That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed $5,000 per annum) of an official to be known as the Alien Property Custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided*, That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law: *Provided further*, That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof.

SEC. 7. (c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefore, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation

shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require.

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom

and held by the Alien Property Custodian or by the Treasurer of the United States.

SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then

such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

SEC. 33. No return may be made pursuant to section 9 or 32 unless notice of claim has been filed: (a) in the case of any property or interest acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of any property or interest acquired by the United States on or after December 18, 1941, by April 30, 1949, or two years from the vesting of the property or interest in respect of which the claim is made, whichever is later. No suit pursuant to section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 or 32(a) hereof.

Federal Rules of Civil Procedure, as Amended.

RULE 24

INTERVENTION

a. *Intervention of Right.* Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or of an officer thereof.